IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10251 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GIRISHBHAI VALJIBHAI CHUDGAR

Versus

GUJARAT ELECTRICITY BOARD (G. E. B.)

Appearance:

1. Special Civil Application No. 10251 of 2001
MRS VASAVDATTA BHATT for Petitioner No. 1
MR SP HASURKAR for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 09/04/2002

ORAL JUDGEMENT

#. Heard learned advocate Ms.Vasavadatta Bhatt appearing on behalf of the petitioner and Mr.S.P.Hasurkar, learned advocate for respondent Board.

#. In the present petition, the petitioner workman has

challenged the award passed by the Labour Court, Surendranagar in Reference No.9/1995, wherein the Reference has been rejected by the Labour Court by order dated 23rd July, 2001. The petitioner workman was working as Line man on probation with effect from 13-9-1993 and his probation period was over on 13-3-1994. Thereafter, he was not taken on duty on the ground of remaining absent and therefore, the respondent Board has passed termination order dated 16-11-1994 stating that the petitioner remained absent with effect from 4th June, 1994 till the date of termination and inspite of various notices served on the petitioner, the respondent did not give any answer and thus, the petitioner workman was dismissed from service with effect from 4th June, 1994 while exercising the powers under Service Rules 113 and 236 of the respondent Board. Learned advocate Mrs.Vasavadatta Bhatt has submitted that the petitioner workman had remained absent and on the basis of the misconduct of remaining absent, service of the petitioner has been terminated by the respondent Board under Service Rule 113 and 236 of the Service Rules without holding any departmental inquiry against the petitioner. Therefore, the order of termination is illegal, contrary to the principles of natural justice. She has further submitted that under Service Rule 113 which gives powers to the respondent Board to terminate the services of any permanent employee from service but that service rule itself violates principles of natural justice while not holding the departmental inquiry at the time of dismissing the services of the workman concerned on the basis of the misconduct without proving the same against the workman and therefore, the dismissal order passed by the respondent board against the workman which is contrary to the principles of natural justice. Therefore, according to the petitioner, the labour court has committed gross error in rejecting the Reference of the petitioner.

#. Learned advocate Mr.S.P.Hasurkar on behalf of the respondent Board has submitted that the respondent Board has powers under Service Regulation 113 and if any employee remains continuously absent on his duty or overstay inspite of warning to return on duty, in such eventuality, the respondent Board can summarily discharge such employee from service of the respondent without necessity of proceedings under the Gujarat Electricity Board [Conduct and Discipline] Proceedings. Accordingly, the petitioner workman who remained absent for the period from 4th June, 1994 continuously without any prior permission of the authority and though notices were served on the petitioner, no reply has been given by the

petitioner and not reported for duty and therefore, ultimately the respondent Board has exercised the powers under Service Rule 113 and dismissed the petitioner workman from service with effect from 4th June, 1994 which is legal and valid order and the labour court has rightly rejected the Reference.

#. It is necessary to quote relevant service Rule 113 under which dismissal order was passed.

"Continued absence from duty or overstay, inspite of warning, to return to duty, shall render the employee liable to summarily discharged from service without the necessity of proceedings under the Gujarat Electricity Board Conduct, Discipline and Appeal Procedure."

#. I have considered submission made by the learned advocates for the parties. The statement of claim has been filed by the petitioner workman vide Exh.3 and the respondent Board has filed reply vide Exh.5. Thereafter, the respondent has produced File Page No.1 to 347 before the Labour court and the petitioner workman has produced five documents vide Exh.6 which also includes letter of Deputy Engineer. The respondent Board has also produced 23 documents which are exhibited as Exh.14 to 35 and thereafter, the petitioner workman has produced copy of ration card vide Exh.37. Exh.43 produced by the respondent Board is muster roll and the petitioner has produced two documents Exh.44. Thereafter, the labour court has considered merits of the matter. The labour court has framed the issue, whether the petitioner workman is entitled reinstatement with full backwages or not ? According to the petitioner, as per the evidence, he was continued with respondent Board upto 16th November, 1994 and admitted that he has not given any reply to the notice which are annexed by the respondent Board. He has disputed that his presence was not marked in muster roll by the respondent Board. The petitioner remained absent from June, 1994 upto November, 1994 and on the basis of said misconduct of remaining absent, while exercising the powers under Service Rule 113, the petitioner workman was dismissed from service. The labour court has come to the conclusion that in para-10 that there was no victimization against the petitioner workman and no witness has been examined and therefore, termination is found to be legal and valid.

#. Bare perusal of the termination or dismissal order dated 16th November, 1994 which has been annexed by the

petitioner at pg.18 - Annexure-B shows that said dismissal order is based upon misconduct of remaining absent without prior permission and not reported for duty inspite of notices though served on the petitioner workman and therefore, the respondent Board has exercised the powers under Service Rule 113 and adopted summary procedure to terminate services of the petitioner on the basis of the misconduct alleged against the petitioner. However, fact remains that no departmental inquiry has been initiated before passing the dismissal order against the petitioner. This aspect has been examined by the Apex Court in case of D.K.YADAV Vs. J.M.A. INDUSTRIES LTD. reported in JT 1993 [3] SC 613, wherein the Apex Court has held that the action of the management in terminating the appellant's service is violative of the principles of natural justice. Under clause 13 (2) (iv) of Certified Standing Orders, on completion of eight calendar days' absence from duty an employee shall be deemed to have abandoned the services and lost his lien on his appointment. Thereafter, the management is empowered to strike off the name from the Muster Rolls. But it is not correct to say that expiry of eight days' absence from duty brings about automatic loss of lien on the post and nothing more need be done by the management to pass an order terminating the service and per force termination is automatic. The principles of natural justice must be read into the Standing Order No. 13 (2) (iv). Otherwise, it would become arbitrary, unjust and unfair violating Article 14. The relevant observations of the Apex Court in para - 12 to 15 aforesaid case are reproduced as under :-

"12. Therefore, fair play in action requires that the procedure Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Art. 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is

the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable.

13. In Delhi Transport Corpn. v. D. T. C. Mazdoor Congress and Ors, [1991] Suppl. 1 SCC 600 this court held that right to public employment and its concomitant right to livelihood received protective umbrella under the can copy of Arts. 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just. fair and reasonable procedure prescribed under the provisions of the constitution and the rules made under the provisions of the constitution and the rules made under proviso to Art. 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III and IV of the Constitution. Art. 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Arts. 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice is an integral part of the Guarantee of equality assured by Art. 14. Any law made or action taken by an employer must be fair,just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of' natural justice. Arts. 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end result.

14. It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of

termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In D. 7. C. v. D. T.C. Mazdoor Congress and Ors. (supra) the constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Art. 14. The order terminating the service of the employees was set aside.

15. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13 (2) (iv). Otherwise it would become arbitrary. unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice."

#. In case of Central Inland Water Transport Corporation Ltd and another v. Brojo Nath Ganguly and another reported in AIR 1986 SC 1571, powers to terminate services summarily has been examined by the Apex Cout and ultimately the Apex Court has decided that such powers exercised for the misconduct to remove the workman concerned without holding departmental inquiry is contrary to the principles of natural justice and hit by Article 14 of the Constitution of India. Relevannt observations made by the Apex Court in para-26, 28, 71, 100, 105, 106 and 113 are referred as under :-

"26. Men's concept of the State as a polity or a political Men's concept of the State as a

polity or a political unit or entity and what the functions of the State are or should be have changed over the years and particularly in the course of this century. A man cannot obstinately cling to the same ideas and concepts all his life. As Emerson said in his essay on "Self-Reliance", "A foolish consistency is the hobgoblin of little minds". Man is by nature ever restless, ever discontent, ever seeking something new, ever dissatisfied with what he has. is inherent trait in the nature of man is reflected in the society in which he lives for a society is a conglomerate of men who live in it. Just as man by nature is dissatisfied, so is society. Just as man seeks something new, ever hoping that a change will bring about something better, so does society. Old values, old ideologies and old systems are thus replaced by new ideologies, a new set of values and a new system, they in their turn to be replaced by different ideologies, different values and a different system. The ideas that seem revolutionary become outmoded with the passage of time and the heresies of today become the dogmas of tomorrow. What proves to be adequate and suited to the needs of a society at a given time and in particular circumstances turns out to be wholly unsuited and inadequate in different times and under different circumstances.

28. The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations Of the people. As the society changes, the law cannot remain immutable. The early nineteenth century essayist and wit, Sydney Smith, said, 'Then I hear any man talk of an unalterable law, I am convinced that he is an unalterable fool." The law must, therefore, in a changing society march in tune with the changed ideas and ideologies. Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to

this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and time-consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society.

71. The first point which falls for consideration on this The first point which falls for consideration on this part of the case is whether Rule 9(i) is unconscionable. In order to ascertain this, we must first examine the facts leading to the making of the said Rules and then the setting in which Rule 9(i) occurs. To recapitulate briefly, each of the contesting Respondents was in the service of the Rivers Steam Navigation Company Limited. Their services were taken over by the Corporation after the Scheme of Arrangement was sanctioned by the Calcutta High Court. Under the said Scheme of Arrangement if their services had not been taken over, they would have been entitled to compensation payable to them, either under the Industrial Disputes Act, 1947, or otherwise legally admissible, by the said company, and the Government of India was to provide to the said company the amount of such compensation. Under the letters of appointment issued to these Respondents, the age of superannuation was fifty-five. Thereafter, Service Rules were framed by the Corporation in 1970 which were replaced in 1979 by new rules namely, the said Rules. The said Rules did not apply to employees covered by the Industrial Employment (Standing Orders) Act, 1946, that is, to workmen, or to those in respect of whom the Board of Directors had issued separate orders. At all relevant times, these Respondents were employed mainly in a managerial capacity. No separate orders were issued by the Board of Directors in their case. These Respondents were, therefore, admittedly governed by the said Rules. Under Rule 10 of the said Rules, they were to retire from the service of the Corporation on completion of the age of fifty-eight years though in exceptional cases and in the interest of the Corporation an extension might have been granted to them with the prior approval of the Chairman-cum-Managing Director

and the Board of Directors of the Corporation. me said Rules, however, provide four different modes in which the services of the Respondents could have been terminated earlier than the age of superannuation, namely, the completion of the age of fifty-eight years. These modes are those provided in Rule 9(i), Rule 9(ii), sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and Rule 37. Of these four modes, the first two apply to permanent employees and the other two apply to all employees. Rule 6 classifies employees as either Permanent or Probationary or Temporary or Casual or Trainee. Clause (i) of Rule 6 defines the expression "Permanent employee" as meaning "an employee whose services have been confirmed in writing according to the Recruitment and Promotion Rules". Under Rule 9(i) which has been extracted above, the employment of a permanent employee is to be subject to termination on three months' notice in writing on either side. If the Corporation gives such a notice of termination, it may pay to the employee the equivalent of three months' basic pay and dearness allowance, if any, in lieu of notice, and where a permanent employee terminates the employment without giving due notice, the Corporation may deduct a like amount from the amount due or payable to the employee. Under Rule 11, an employee who wishes to leave the service of the Corporation by resigning therefrom, is to give to the Corporation the same notice as the Corporation is required to give to him under Rule 9, that is, a three months' notice in writing. Under rule 9(ii), the services of a permanent employee can be terminated on the ground of "Services no longer required in the interest of the Company" (that is, the Corporation). In such a case, a permanent employee whose service is terminated under this clause is to be paid fifteen days' basic pay and dearness allowance for each completed year of continuous service in the Corporation and he is also to be entitled to encashment of leave to his credit. Rule 36 prescribes the penalties which can be imposed, "for good and sufficient reasons and as hereinafter provided" in the said Rules, on an employee for his misconduct. Clause (a) of Rule 36 sets out the minor penalties and clause (b) of Rule 36 sets out the major penalties. Under sub-clause (iv) of clause (b) of Rule 36, dismissal from service is a major penalty. None

of the major penalties including the penalty of dismissal is to be imposed except after holding an inquiry in accordance with the provisions of Rule 38 and until after the inquiring authority, where it is not itself the disciplinary authority, has forwarded to the disciplinary authority the records of the inquiry together with its report, and the disciplinary authority has taken its decision as provided in Rule 39. Rule 40 prescribes the procedure to be followed in imposing minor penalties. Under Rule 43, notwithstanding anything contained in Rules 38, 39 or 40, the disciplinary authority may dispense with the disciplinary inquiry in the three cases set out in Rule 43 and impose upon an employee either a major or minor penalty. We have reproduced Rule 43 earlier. Rule 45 provides for an appeal against an order imposing any of the penalties specified in Rule 36. Under Rule 37, the Corporation has the right to terminate the service of any employee at any time without any notice if the employee is found guilty of any insubordination, intemperance or other misconduct or of any breach of any rules pertaining to service or conduct or nonperformance of his duties. The said Rules do not require that any disciplinary inquiry should be held before terminating an employee's service under rule 37."

100. The power conferred by Rule 9(i) is not only arbitrary The power conferred by Rule 9(i) is not only arbitrary but is also discriminatory for it enables the Corporation to discriminate between employee and employee. It can pick up one employee and apply to him clause (i) of Rule 9. It can pick up another employee and apply to him clause (ii) of Rule 9. It can pick up yet another employee and apply to him sub-clause (iv) of clause (b) of Rule 36 read with Rule 38 and to yet another employee it can apply Rule 37. All this the Corporation can do when the same circumstances exist as would justify the Corporation in holding under Rule 38 a regular disciplinary inquiry into the alleged misconduct of the employee. Both the contesting Respondents had, in fact, been asked to submit their explanation to the charges made against them. Sengupta had been informed that a disciplinary inquiry was proposed to be held in his case. The charges made against both the Respondents were such that a disciplinary inquiry could easily

have been held. It was, however, not held but instead resort was had to Rule 9(i).

105. As the Corporation is "the State" within the meaning of As the Corporation is "the State" within the meaning of Article 12, it was amenable to the writ jurisdiction of the High Court under Article 226. It is now well-established that an instrumentality or agency of the State being "the State" under Article 12 of the Constitution is subject to the Constitutional limitations, and its actions are State actions and must be judged in the light of the Fundamental Rights guaranteed by Part III of the Constitution (see, for instance, Sukhdev Singh and others v. Bbagatram Sardar Singh Raghuvanshi and another, The International Airport Authority's Case and Ajay Hasia's Case). The actions of an instrumentality or agency of the State must, therefore, be in conformity with Article 14 of the Constitution. The progression of the judicial concept of Article 14 from a prohibition against discriminatory class legislation to an invalidating factor for any discriminatory or arbitrary State action has been traced in Tulsiram Patel's Case (at pages 473-476). The principles of natural justice have now come to be recognized as being a part of the Constitutional guarantee contained in Article 14. In Tulsiram Patel's Case this Court said (at page 476) :

"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The

principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'State' in Article 12, is charged with the duty of deciding a matter."

106. As pointed out above, Rule 9(i) is both arbitrary and unreasonable and it also wholly ignores and sets aside the audi alteram partem rule it, therefore, violates Article 14 of the Constitution.

113. In the result, both these Appeals fail and are dismissed but the order passed by the Calcutta High Court is modified by substituting for the declaration given by it a declaration that clause (i) of Rule 9 of the "Service, Discipline & Appeal Rules - 1979" of the Central Inland Water Transport Corporation Limited is void under section 23 of the Indian Contract Act, 1872, as being opposed to public policy and is also ultra vires Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months' notice in writing or by paying him the equivalent of three months' basic pay and dearness allowance in lieu of such notice."

#. In light of this Service Regulation, it is pertinent to note that wording of termination order dated 16th November, 1994. In the said termination order, the petitioner Board has mentioned that the respondent workman has remained absent with effect from 4th June, 1994 without any prior permission of the concerned authority. Inspite of three notices served on the respondent workman, no reply has been given as per the case of the petitioner. Therefore, to remain without prior permission is considered to be misconduct and considering this misconduct, powers has been exercised by the petitioner Board under Service Regulation 113 of the Gujarat Electricity Board. This specific word `misconduct' has been incorporated in the order of termination and on the basis of this misconduct, powers has been exercised by the petitioner Board. Therefore, the question is whether the petitioner Board is entitled to terminate services of any permanent employee for such misconduct without holding departmental inquiry. This

very aspect has considered by the Apex Court in case of M/S SCOOTER INDIA LTD MOHAMMAD YAQUB AND ANOTHER reported in 2001 Lab.I.C. pg.71. The Apex Court has observed that termination of services on the basis of over staying of leave, cannot result in automatic termination of service, Standing Order providing for such automatic termination without affording opportunity of hearing to employee is bad. In this decision, the Apex Court has considered earlier two decisions viz. [1] Uptron India Ltd. V. Shammi Bhan, reported in 1998 SC 1681 and [2] Scooter India Vs. Vijay E.V.Eldred reported in 1998 [6] SCC 549. The Apex Court has observed this aspect after considering aforesaid two decisions in para 10, 11 and 12, which are referred as under :-

"10. We are in complete agreement with the ratio laid down in this case as well as the observations made by this Court in respect of the stray observations in Scooter India's case [supra].

11. Therefore, it is clear that there could not be any automatic termination of the respondent on the basis of Standing Order 9.3.12. Principles of natural justice had to be complied with.

12. The question which then arises is whether the principles of natural justice were followed in this case. As has been set out hereinabove Mr. Swarup had submitted that the workman had been given an opportunity to join the duty and that he did not join duty even though repeatedly called upon to do so. It is contended that principles of natural justice have been complied with in this case. However, the material on record indicates otherwise. The labour court in its award sets out and accepts the respondent's case that he had not been allowed to join duty. The respondent has given evidence that even though he personally met Chief Personnel Officer he was still not allowed to enter the premises. The evidence is that in spite of slip Ext. W.2 he was prevented from joining duty when he attempted to join duty. The slip Ext. W.2 had been signed by the Security Inspector of the Appellant. This showed that the respondent had reported for work. As against this evidence the appellant has not led any evidence to show that the workman had not reported for duty. Even though the slip Ex.W-2 had been proved by the

workman, the Security Inspector, one Mr.Shukla, was not examined by the Appellant. Further the evidence of the Senior Time Keeper of the Appellant established that the workman had worked for more than 240 days within a period of 12 calender months immediately preceding the date of termination of service. This was proved by a joint inspection report, which was marked as Exh.45/A. It was on the basis of this material and this evidence that the Labour Court came to the conclusion that there was retrenchment without following the provisions of law. As the workman was not allowed to join duty, Standing Order 9.3.12 could not have been used for terminating his services."

#. Recently also, in case of MAJOR SINGH V. STATE OF PUNJAB reported in 2001 AIR SCW 2272, the question has been considered by the Apex Court. The order discharging Constable from service casting aspersions on constable regarding his conduct, mentioning that he is in habit of remaining absent for which he has been warned by superior, earlier service record and punishments imposed also mentioned, order of discharge is not an order simpliciter. But was by way of penalty and amounts to dismissal and appropriate enquiry under rule is required to be initiated. The relevant observations made by the Apex Court in this judgment in para-6 to 8 are reproduced as under :-

"6. If any order under Rule 12.21 has to be passed which can stand scrutiny of Court and can be said to be legal, valid and falling within the fourcorners of the said rule without casting any aspersion or stigma on the person concerned, simpliciter mentioning that his work as constable is found not satisfactory, can suffice. But that, unfortunately, is not the language in which the impugned order was couched. It went beyond the four corners of Rule 12.21 and clearly stigmatised the appellant and tried to dismiss him from service for the alleged misconduct for which appropriate enquiry under Rule 16.24 against the appellant was required to be initiated. It is interesting to note that such an enquiry was initiated but was intercepted and was given a go-by for un-understandable reason. Consequently, even on merits the impugned order in second appeal cannot be sustained. Even apart from that, in second appeal in the light of

concurrent findings of fact reached by the trial court and the First Appellate Court on the nature of the impugned order passed against the appellant, without framing any substantial question of law, the learned single Judge could not have exercised jurisdiction under Section 100, Code of Civil Procedure.

7. It is now well settled by a catena of decisions of this Court that in order to be treated as an order of discharge simpliciter it on the face of it should not cast any aspersion or stigma on the person concerned an he must simply be told off the gates on the ground of unsatisfactory work. Rule 12.21 itself fell for consideration of this Court in the case of State of Haryana v. Jagdish Chander [1995] 2 SCC 567 : [1995 AIR SCW 964 : AIR 1995 SC 984]. This Court clearly observed that the findings of habitual absence and indiscipline necessarily cast a stigma on the career of the delinquent and would be an impediment for any future employment elsewhere. Consequently, such an order could not be sustained under Rule 12.21 of Punjab Police Rules.

8. The aforesaid decision squarely applies to the facts of the present case. It is unfortunate that this decision, though rendered as early as in 1995, was not brought to the notice of the learned Single Judge who decided the second appeal in the present case in August, 1998. We are sure that if the aforesaid judgment was brought to the notice of the learned single Judge he would have come to the correct conclusion on the facts of the present case. For all these reasons, therefore, this appeal is allowed. The impugned order of the High Court in Second Appeal is set aside. The decree passed by the trial Court and as confirmed by the first appellate Court shall stand confirmed."

##. Recently also, the Division Bench of the Allahabad High Court has considered similar issue in case of SUNIL KUMAR PATHAK V. INDIAN OIL CORPORATION reported in 2001 Lab.I.C. 3518, wherein the head notes says that Constitution of India Article 16 - Indian Oil Corporation Ltd. [Conduct, Discipline and Appeal] Rules 1980, R-8 Overstaying on leave without prior intimation, clause providing for treating of service of such employee as voluntarily abandoned, is violative of Article 14 and

order declaring services of employee as abandoned without affording opportunity to hearing to him liable to be quashed. Relevant observations made in para 15 & 16 are quoted referred as under :-

"15. The respondents are relying on Clause 8 of the Indian Oil Corporation Ltd [Conduct, Discipline and Appeal] Rules 1980 which state that if an employee overstayed leave beyond the period of leave originally granted or subsequently extended or is otherwise absent beyond 21 days continuously without prior permission or intimation he shall be treated to have voluntarily abandoned the Corporation's service.

16. In our opinion the facts of the case are squarely covered by the decision of the Supreme Court in D.K.Yadav v. J.M.A. Industry Ltd. [1993] 3 SCC 259. In the view of the said decision Clause 8 of the Rules is clearly violative of Article 14 of the Constitution and the petitioner should have been given opportunity of hearing in an enquiry after chargesheeting him. Since that was not done the impugned order dated 20-5-1997 Annexure 1 to the petition is clearly illegal and is hereby quashed."

##. This Court has considered above observations made by the Apex Court in above referred cases and considered the observations made by the Labour Court and the undisputed facts before the labour court that services of the petitioner was terminated because he remained absent for the period from June, 1994 to November, 1994. To remain absent without prior permission of the concerned authority is misconduct under the Service Rules of the Board and when such misconduct was alleged to have committed by the petitioner, then it was the duty of the Board to hold departmental inquiry and after completion of the departmental inquiry, to pass appropriate orders of punishment but such procedure has been grossly ignored by the Board and straightaway passed dismissal order under Service Rule 113 without holding departmental inquiry and as such, no opportunity was given to the petitioner before passing the dismissal order straightaway. However, this contention though raised by the petitioner before the labour court but the labour court has not examined the same and therefore, according to my opinion, the labour court has committed gross error in rejecting the Reference when the petitioner was

dismissed from service by order dated 16th November, 1994 on the basis of misconduct of remaining absent without prior permission with effect from 4th June, 1994 and therefore, not to hold departmental inquiry before passing the order of dismissal, is contrary to principles of natural justice. Therefore, the award passed by the labour court is required to be quashed and set aside in the interest of justice.

##. So far the question of backwages is concerned, according to my opinion, the petitioner workman was appointed on probation with effect from 13th September, 1993 and his probation period was completed on 13th March, 1994 and probation period was extended upto 30th September, 1994 but thereafter, no extension was given. However, he remained absent from 4th June, 1994 and that is how, dismissal order has been passed by the respondent Board on 16th November, 1994. Therefore, considering all these aspects and the fact that the respondent Board being authority and considering the one more aspect that the matter is pending since 1995 upto 2002. The workman petitioner was excamined before the labour court vide Exh.9 but there is nothing on record that whether workman remained without job or not and not gainfully employed during interim period. In absence of such evidence, according to my opinion, the petitioner is not entitled to any amount of backwages of the interim period.

##. In the result, present petition is allowed. The award passed by the labour court in Reference No.9/95 dated 23rd July, 2001 is hereby quashed and set aside with direction to the respondent Board to reinstate the petitioner workman in service on his original position with continuity of service without any backwages of the interim period within period of one month from the date of receiving the certified copy of this order.

Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date : 9-4-2002 [H.K.Rathod, J.]

#kailash#